
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MCC Georgia LLC)	File No. EB-03-AT-064
Owner of Antenna Structure Registration)	NAL/Acct. No.: 200332480022
Number 1022429 in McIntyre, Georgia)	FRN: 0004-3413-68
Middletown, New York)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: April 15, 2003

By the Enforcement Bureau, Atlanta Office:

I. Introduction

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that MCC Georgia LLC, owner of antenna structure registration number 1022429 in McIntyre, Georgia, willfully and repeatedly violated Section 17.51 of the Commission’s Rules (“Rules”)¹ by failing to exhibit obstruction lighting from sunset to sunrise. We conclude that MCC Georgia LLC is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. Background

2. On March 4 and 5, 2003, an agent from the Commission’s Atlanta Field Office observed that antenna structure 1022429, owned by MCC Georgia LLC, located at 32° 49’ 39.0” North Latitude, 083° 12’ 44.0” West Longitude in McIntyre, Georgia, was not illuminated per its assigned painting and lighting specifications. On both days, the top beacon was extinguished on the antenna structure between local sunset and sunrise.

3. On March 6, 2003, the agent contacted the Federal Aviation Administration (“FAA”), and determined that they had not been notified of the light extinguishment. The agent also interviewed a representative of MCC Georgia LCC who confirmed ownership of the structure, was unaware of the outage and was not aware as to whether the FAA had been contacted. Subsequently, on March 24, 2003, another representative of MCC Georgia LCC stated that, after the agent’s call, the structure was inspected on March 6, 2003, and the top beacon was found extinguished. The representative stated that there was no daily observation procedure, no monitoring equipment, and no automatic alarm to monitor the status of the structure’s lighting system.

III. Discussion

4. Section 17.51 of the Rules requires red obstruction lighting be exhibited from sunset to sunrise. MCC Georgia LLC’s antenna structure registration number 1022429 requires red lights be exhibited on this structure from sunset to sunrise. MCC Georgia LLC failed to exhibit the required lights

¹ 47 C.F.R. § 17.51.

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on its antenna structure from at least March 4 to March 5, 2003. In addition, MCC Georgia LLC failed to immediately notify the FAA of the improper functioning of the structure's lighting² and failed to inspect the structure's lighting system for proper operation.³

5. Based on the evidence before us, we find that MCC Georgia LLC repeatedly⁴ and willfully⁵ violated Section 17.51 of the Rules by failing to exhibit required obstruction lighting on its antenna structure between sunset and sunrise.

6. Pursuant to Section 1.80(b)(4) of the Rules, the base forfeiture amount for the violation cited in this Notice is \$10,000.⁶ Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), requires us to take into account "...the nature, circumstances, extent and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁷ Considering the entire record and applying the statutory factors listed above, this case warrants a \$10,000 forfeiture.

IV. Ordering Clauses

7. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ MCC Georgia LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of \$10,000 for willful and repeated violation of Section 17.51 of the Commission's Rules.

8. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release of this NAL, MCC Georgia LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by a check, or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must note the FRN and NAL/Acct. No. referenced in the letterhead above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, SW, Washington, D.C. 20554.¹⁰

² Owners of registered antenna structures with assigned lighting must immediately report to the FAA any known improper functioning of any top or flashing light. See 47 C.F.R. § 17.48(a).

³ See 47 C.F.R. § 17.47.

⁴ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁵ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁶ 47 C.F.R. § 1.80(b)(4).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, and 1.80.

¹⁰ See 47 C.F.R. § 1.1914.

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10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, D.C. 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and must include the FRN and NAL/Acct. No. referenced in the letterhead above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. **IT IS FURTHER ORDERED THAT** a copy of this NAL shall be sent by regular mail and Certified Mail, Return Receipt Requested, to MCC Georgia LLC, 100 Crystal Run Road, Middletown, NY 10941.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce
District Director